



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5462

by Rep. Thomas Morrison

SYNOPSIS AS INTRODUCED:

210 ILCS 5/3	from Ch. 111 1/2, par. 157-8.3
210 ILCS 5/6.2 new	
210 ILCS 5/6.5	
210 ILCS 5/10d	from Ch. 111 1/2, par. 157-8.10d
210 ILCS 5/10f	from Ch. 111 1/2, par. 157-8.10f
210 ILCS 5/10h new	

Amends the Ambulatory Surgical Treatment Center Act. Provides that "ambulatory surgical treatment center" includes any facility in which a medical or surgical procedure is utilized to terminate 50 or more pregnancies in any calendar year (instead of to terminate a pregnancy). Requires a physician to remain on the premises of an ambulatory surgical treatment center on any day when an abortion is performed at the facility and to have admitting privileges at a hospital that is located within 30 miles of the ambulatory surgical treatment center. Provides that any facility that performs more than 50 abortions in a calendar year shall comply with all of the statutes and rules that are applicable to ambulatory surgical treatment centers. Authorizes the Director of Public Health to seek an injunction against any facility that is in violation of the Act. Creates a private right of action against a facility or physician that performs an abortion in willful violation of the Act. Makes other changes.

LRB098 19268 RPS 54420 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Ambulatory Surgical Treatment Center Act is
5 amended by changing Sections 3, 6.5, 10d, and 10f and by adding
6 Sections 6.2 and 10h as follows:

7 (210 ILCS 5/3) (from Ch. 111 1/2, par. 157-8.3)

8 Sec. 3. As used in this Act, unless the context otherwise
9 requires, the following words and phrases shall have the
10 meanings ascribed to them:

11 (A) "Ambulatory surgical treatment center" means any
12 institution, place or building devoted primarily to the
13 maintenance and operation of facilities for the performance of
14 surgical procedures or any facility in which a medical or
15 surgical procedure is utilized to terminate 50 or more
16 pregnancies in any calendar year ~~a pregnancy~~, irrespective of
17 whether the facility is devoted primarily to this purpose. Such
18 facility shall not provide beds or other accommodations for the
19 overnight stay of patients; however, facilities devoted
20 exclusively to the treatment of children may provide
21 accommodations and beds for their patients for up to 23 hours
22 following admission. Individual patients shall be discharged
23 in an ambulatory condition without danger to the continued well

1 being of the patients or shall be transferred to a hospital.

2 The term "ambulatory surgical treatment center" does not
3 include any of the following:

4 (1) Any institution, place, building or agency
5 required to be licensed pursuant to the "Hospital Licensing
6 Act", approved July 1, 1953, as amended.

7 (2) Any person or institution required to be licensed
8 pursuant to the Nursing Home Care Act, the Specialized
9 Mental Health Rehabilitation Act, or the ID/DD Community
10 Care Act.

11 (3) Hospitals or ambulatory surgical treatment centers
12 maintained by the State or any department or agency
13 thereof, where such department or agency has authority
14 under law to establish and enforce standards for the
15 hospitals or ambulatory surgical treatment centers under
16 its management and control.

17 (4) Hospitals or ambulatory surgical treatment centers
18 maintained by the Federal Government or agencies thereof.

19 (5) Any place, agency, clinic, or practice, public or
20 private, whether organized for profit or not, devoted
21 exclusively to the performance of dental or oral surgical
22 procedures.

23 (B) "Person" means any individual, firm, partnership,
24 corporation, company, association, or joint stock association,
25 or the legal successor thereof.

26 (C) "Department" means the Department of Public Health of

1 the State of Illinois.

2 (D) "Director" means the Director of the Department of
3 Public Health of the State of Illinois.

4 (E) "Physician" means a person licensed to practice
5 medicine in all of its branches in the State of Illinois.

6 (F) "Dentist" means a person licensed to practice dentistry
7 under the Illinois Dental Practice Act.

8 (G) "Podiatric physician" means a person licensed to
9 practice podiatry under the Podiatric Medical Practice Act of
10 1987.

11 (H) "Abortion" means the act of using or prescribing any
12 instrument, medicine, drug, method, or device or any other
13 substance with the intent to terminate the clinically
14 diagnosable pregnancy of a woman with knowledge that the
15 termination by those means will, with reasonable likelihood,
16 cause the death of the unborn child. "Abortion" does not
17 include the use or prescription of any instrument, medicine,
18 drug, method, or device or any other substance to terminate the
19 clinically diagnosable pregnancy of a woman if done with the
20 intent to save the life or preserve the health of the unborn
21 child, remove a dead unborn child caused by spontaneous
22 abortion, or remove an ectopic pregnancy.

23 (J) "Admitting privileges" means the right of a physician
24 to admit patients to a particular hospital for the purposes of
25 providing specific diagnostic or therapeutic services to the
26 patient in that hospital.

1 (K) "Born alive" means the complete expulsion or extraction
2 of an infant from his or her mother, regardless of the state of
3 gestational development, that, after expulsion or extraction,
4 whether or not the umbilical cord has been cut or the placenta
5 is attached, and regardless of whether the expulsion or
6 extraction occurs as a result of natural or induced labor,
7 cesarean section, or induced abortion, shows any evidence of
8 life, including, but not limited to, breathing having a
9 heartbeat, umbilical cord pulsation, or the definite movement
10 of voluntary muscles.

11 (L) "Pregnancy" means the reproductive condition of having
12 an unborn child in the woman's uterus.

13 (M) "Unborn child" means an individual of the species homo
14 sapiens from fertilization to live birth.

15 (Source: P.A. 97-38, eff. 6-28-11; 97-227, eff. 1-1-12; 97-813,
16 eff. 7-13-12; 98-214, eff. 8-9-13.)

17 (210 ILCS 5/6.2 new)

18 Sec. 6.2. Exceptions and preferences for abortion clinics;
19 other statutes and rules. Notwithstanding any other statute,
20 rule, or regulation to the contrary, an ambulatory surgical
21 treatment center utilized to terminate pregnancies must comply
22 with all of the statutes, rules, and regulations generally
23 applicable to other ambulatory surgical treatment centers. If
24 an ambulatory surgical treatment center is required to perform
25 construction or other physical renovation to comply with the

1 statutes, rules, and regulations applicable pursuant to this
2 Act, then the ambulatory surgical treatment center shall
3 complete any such construction or other physical renovation no
4 later than January 1, 2016.

5 (210 ILCS 5/6.5)

6 Sec. 6.5. Clinical privileges; advanced practice nurses.
7 All ambulatory surgical treatment centers (ASTC) licensed
8 under this Act shall comply with the following requirements:

9 (1) No ASTC policy, rule, regulation, or practice shall be
10 inconsistent with the provision of adequate collaboration and
11 consultation in accordance with Section 54.5 of the Medical
12 Practice Act of 1987.

13 (2) Operative surgical procedures shall be performed only
14 by a physician licensed to practice medicine in all its
15 branches under the Medical Practice Act of 1987, a dentist
16 licensed under the Illinois Dental Practice Act, or a podiatric
17 physician licensed under the Podiatric Medical Practice Act of
18 1987, with medical staff membership and surgical clinical
19 privileges granted by the consulting committee of the ASTC. A
20 licensed physician, dentist, or podiatric physician may be
21 assisted by a physician licensed to practice medicine in all
22 its branches, dentist, dental assistant, podiatric physician,
23 licensed advanced practice nurse, licensed physician
24 assistant, licensed registered nurse, licensed practical
25 nurse, surgical assistant, surgical technician, or other

1 individuals granted clinical privileges to assist in surgery by
2 the consulting committee of the ASTC. Payment for services
3 rendered by an assistant in surgery who is not an ambulatory
4 surgical treatment center employee shall be paid at the
5 appropriate non-physician modifier rate if the payor would have
6 made payment had the same services been provided by a
7 physician.

8 (2.5) A registered nurse licensed under the Nurse Practice
9 Act and qualified by training and experience in operating room
10 nursing shall be present in the operating room and function as
11 the circulating nurse during all invasive or operative
12 procedures. For purposes of this paragraph (2.5), "circulating
13 nurse" means a registered nurse who is responsible for
14 coordinating all nursing care, patient safety needs, and the
15 needs of the surgical team in the operating room during an
16 invasive or operative procedure.

17 (3) An advanced practice nurse is not required to possess
18 prescriptive authority or a written collaborative agreement
19 meeting the requirements of the Nurse Practice Act to provide
20 advanced practice nursing services in an ambulatory surgical
21 treatment center. An advanced practice nurse must possess
22 clinical privileges granted by the consulting medical staff
23 committee and ambulatory surgical treatment center in order to
24 provide services. Individual advanced practice nurses may also
25 be granted clinical privileges to order, select, and administer
26 medications, including controlled substances, to provide

1 delineated care. The attending physician must determine the
2 advance practice nurse's role in providing care for his or her
3 patients, except as otherwise provided in the consulting staff
4 policies. The consulting medical staff committee shall
5 periodically review the services of advanced practice nurses
6 granted privileges.

7 (4) The anesthesia service shall be under the direction of
8 a physician licensed to practice medicine in all its branches
9 who has had specialized preparation or experience in the area
10 or who has completed a residency in anesthesiology. An
11 anesthesiologist, Board certified or Board eligible, is
12 recommended. Anesthesia services may only be administered
13 pursuant to the order of a physician licensed to practice
14 medicine in all its branches, licensed dentist, or licensed
15 podiatric physician.

16 (A) The individuals who, with clinical privileges
17 granted by the medical staff and ASTC, may administer
18 anesthesia services are limited to the following:

- 19 (i) an anesthesiologist; or
20 (ii) a physician licensed to practice medicine in
21 all its branches; or
22 (iii) a dentist with authority to administer
23 anesthesia under Section 8.1 of the Illinois Dental
24 Practice Act; or
25 (iv) a licensed certified registered nurse
26 anesthetist; or

1 (v) a podiatric physician licensed under the
2 Podiatric Medical Practice Act of 1987.

3 (B) For anesthesia services, an anesthesiologist shall
4 participate through discussion of and agreement with the
5 anesthesia plan and shall remain physically present and be
6 available on the premises during the delivery of anesthesia
7 services for diagnosis, consultation, and treatment of
8 emergency medical conditions. In the absence of 24-hour
9 availability of anesthesiologists with clinical
10 privileges, an alternate policy (requiring participation,
11 presence, and availability of a physician licensed to
12 practice medicine in all its branches) shall be developed
13 by the medical staff consulting committee in consultation
14 with the anesthesia service and included in the medical
15 staff consulting committee policies.

16 (C) A certified registered nurse anesthetist is not
17 required to possess prescriptive authority or a written
18 collaborative agreement meeting the requirements of
19 Section 65-35 of the Nurse Practice Act to provide
20 anesthesia services ordered by a licensed physician,
21 dentist, or podiatric physician. Licensed certified
22 registered nurse anesthetists are authorized to select,
23 order, and administer drugs and apply the appropriate
24 medical devices in the provision of anesthesia services
25 under the anesthesia plan agreed with by the
26 anesthesiologist or, in the absence of an available

1 anesthesiologist with clinical privileges, agreed with by
2 the operating physician, operating dentist, or operating
3 podiatric physician in accordance with the medical staff
4 consulting committee policies of a licensed ambulatory
5 surgical treatment center.

6 (5) On any day when any abortion is performed in an
7 ambulatory surgical treatment center, a physician who has
8 admitting privileges at an accredited hospital that is located
9 in this State and is located within 30 miles of the ambulatory
10 surgical treatment center must remain on the premises of the
11 ambulatory surgical treatment center to facilitate the
12 transfer to a hospital, if necessary, of an abortion patient or
13 a child born alive until all abortion patients are stable and
14 ready to leave the post-surgical recovery room. Each day this
15 Section is violated constitutes a separate violation for
16 purposes of assessing civil penalties or fines.

17 (Source: P.A. 98-214, eff. 8-9-13.)

18 (210 ILCS 5/10d) (from Ch. 111 1/2, par. 157-8.10d)

19 Sec. 10d. Fines and penalties.

20 (a) When the Director determines that a facility has failed
21 to comply with this Act or the Illinois Adverse Health Care
22 Events Reporting Law of 2005 or any rule adopted under either
23 of those Acts, the Department may issue a notice of fine
24 assessment which shall specify the violations for which the
25 fine is assessed. The Department may assess a fine of up to

1 \$500 per violation per day commencing on the date the violation
2 was identified and ending on the date the violation is
3 corrected, or action is taken to suspend, revoke or deny
4 renewal of the license, whichever comes first.

5 (b) In determining whether a fine is to be assessed or the
6 amount of such fine, the Director shall consider the following
7 factors:

8 (1) The gravity of the violation, including the
9 probability that death or serious physical or mental harm
10 to a patient will result or has resulted, the severity of
11 the actual or potential harm, and the extent to which the
12 provisions of the applicable statutes or rules were
13 violated;

14 (2) The reasonable diligence exercised by the licensee
15 and efforts to correct violations;

16 (3) The duration, frequency, and relevance of any ~~Any~~
17 previous violations committed by the licensee; and

18 (4) The financial benefit to the facility or to the
19 licensee of committing or continuing the violation.

20 (c) The Attorney General or the State's Attorney for the
21 county in which the violation occurred may bring an action in a
22 court of competent jurisdiction to enforce the collection of
23 civil penalties or fines.

24 (Source: P.A. 94-242, eff. 7-18-05.)

25 (210 ILCS 5/10f) (from Ch. 111 1/2, par. 157-8.10f)

1 Sec. 10f. Denial, suspension, revocation or refusal to
2 renew a license; suspension of a service.

3 (a) When the Director determines that there is or has been
4 a substantial or continued failure to comply with this Act or
5 any rule promulgated hereunder, the Department may issue an
6 order of license denial, suspension or revocation, or refusal
7 to renew a license, in accordance with subsection (a) of
8 Section 10g of this Act.

9 (b) When the Director determines that a facility has failed
10 to demonstrate the capacity to safely provide one or more of
11 its services to patients, the Department may issue an order of
12 service suspension in accordance with subsection (a) of Section
13 10g of this Act.

14 (c) If, however, the Department finds that the public
15 interest, health, safety, or welfare imperatively requires
16 emergency action, and if the Director incorporates a finding to
17 that effect in the order, summary suspension of a service or a
18 license to open, conduct, operate, and maintain an ambulatory
19 surgical treatment center or any part thereof may be ordered
20 pending proceedings for license revocation or other action,
21 which shall be promptly instituted and determined.

22 (d) In addition to any other penalty provided by law,
23 whenever in the judgment of the Director any person has engaged
24 or is about to engage in any acts or practices that constitute
25 or will constitute a violation of this Act, the Director shall
26 make application to any court of competent jurisdiction for an

1 order enjoining those acts or practices. Upon a showing by the
2 Director that the person has engaged or is about to engage in
3 any of those acts or practices that constitute a violation of
4 this Act, an injunction, restraining order, or other order as
5 may be appropriate shall be granted by the court without bond.

6 (Source: P.A. 86-1292.)

7 (210 ILCS 5/10h new)

8 Sec. 10h. Private right of action. A woman upon whom an
9 abortion has been performed in violation of this Act, or, if
10 the woman is an unemancipated minor, the parent or legal
11 guardian of the woman, may commence a civil action for actual
12 and punitive damages against the facility where the abortion
13 was performed or the person who performed the abortion for any
14 willful violation of this Act.